IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4290 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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H.V.NAKUM - Petitioner(s)
Versus
JAMNAGAR MUNICIPAL CORPORATION - Respondent(s)

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Appearance :
MR SIKANDER SAIYED for Petitioner(s) : 1,
MR AR THACKER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 10/07/2006

ORAL JUDGMENT

1. The petitioner has invoked Articles 14,16 and 226 of the Constitution to challenge the order dated 19.11.2005 of the respondent by which the service of the petitioner was terminated on account of his

appointment itself being illegal. There was no gainsaying the fact that the petitioner was appointed and his service was sought to be regularized in violation of the relevant recruitment rules of the respondent. It was also not in dispute that the petitioner was given an opportunity of being heard and the respondent were acting under the direction of the Government occasioned by an order of this Court. The learned counsel pleaded ignorance about those proceedings and orders. The continuation of the petitioner in service was also held to be against public interest in the sense that, if officers like the petitioner appointed in violation of the rules were continued, the other candidates and officers eligible for promotion would lose their chances of promotion.

2. By filing an affidavit of Dy.Commissioner, it is stated on behalf of the respondent that the petitioner's appointment was not in accordance with the recruitment rules and the procedure for recruitment laid down in the Jamnagar Municipal Corporation Karmachari (Recruitment) Rules was not

followed. The petitioner was given reasonable opportunity to show cause and, after careful consideration and reply of the petitioner, the respondent has passed the impugned order dated 19.11.2005 terminating his services. Other contentions are denied on oath.

3. Whereas the petition was found to be faint copy of the original without execution of affidavit by the petitioner in support of the petition, and the learned counsel for the petitioner had sought several adjournments at the admission stage on flimsy grounds, the petitioner was directed to remain personally present in the Court on 3.7.2006. Since the petitioner did not remain present on 3.7.2006 on the stated ground of sickness of someone in his family, the hearing was adjourned to today and again it was stated by the learned counsel that the wife of the petitioner was suffering from high B.P. Thus, it appeared that the petitioner had moved the Court without affirming his averments on oath and without placing on record the relevant material. Learned counsel even refused to refer to the rules which are

applicable to the case of the petitioner and he only submitted that several other officers were also appointed and continued in violation of the rules. He relied upon a decision dated 14.12.2005 of this Court (Coram: Hon'ble Mr Justice Jayant Patel) in Special Civil Application No.23662 of 2005 and allied matters, which has no application in the facts of the present case.

4. In the facts and for the reasons discussed hereinabove, the petition is dismissed with costs of Rs.3,000/- which shall be paid within a month by the petitioner to the respondent on whose behalf Mr A.R. Thacker appeared on caveat.

[D.H. Waghela, J.]

msp